

Special Civil Application No 2363 of 1988

Date of decision: 01/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

PRABHASHANKER B. BHATT,

vs

COMPETENT AUTHORITY & ADDITIONAL COLLECTOR (ULC), RAJKOT & ANR.

Appearance: Shri J.R. Nanavaty, Advocate, for the Petitioner  
Shri D.N. Patel, Asst. Govt. Pleader, for the  
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

#### ORAL JUDGEMENT

The order passed by and on behalf of the State of Gujarat (respondent No.2 herein) on 16th March 1988 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 is under challenge in this petition under art. 227 of the Constitution of India. By its impugned order, respondent No.2 rejected the petitioner's application against the order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 31st May 1982 declaring the holding of the petitioner to be in excess of the ceiling limit by 63 square meters.

The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act. That was duly processed by

respondent No.1 herein. After observing all necessary formalities according to law, by his order passed on 31st May 1982, the petitioner's holding was declared surplus by 63 square meters. Thereupon an application was given to respondent No.1 that, since the excess land in the hands of the petitioner was less than 10 per cent of the ceiling limit prescribed for the urban agglomeration of Rajkot, it need not be declared surplus and it should be exempted under sec. 20 of the Act. By his communication of 31st May 1982, respondent No.1 asked the petitioner to take out appropriate proceeding for the purpose. Its copy is at Annexure A to this petition. The aggrieved petitioner thereupon moved respondent No.2 in revision under sec. 34 of the Act. A copy of the revisional application is at Annexure B to this petition. By the order passed by and on behalf of respondent No.2 on 16th March 1988, respondent No.2 rejected it. Its copy is at Annexure C to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure C to this petition.

3. By its circular of 4th January 1985, respondent No.2 has taken a policy decision to allow the excess land within 10% of the ceiling limit to be retained by the land-holder if such small area could not be used independently. It is unfortunate that the author of the order at Annexure C to this petition remained oblivious to the circular issued on 4th January 1985. In that view of the matter, the excess holding to the tune of 63 square meters only ought not to have been declared surplus by respondent No.1 or respondent No.2

4. That apart, it was the case of the petitioner before respondent No.2 that one property was a constructed one. The petitioner has produced a certificate from the Secretary of the concerned co-operative society at Rajkot declaring that the petitioner has been allotted one plot admeasuring 355 square yards (equal to 297.19 square meters) and the petitioner has raised a house thereon as early as in 1963-64. A copy of that certificate is at Annexure E to this petition. It is possible that the petitioner might not have produced the relevant material before the Competent Authority in that regard under an erroneous impression that his excess holding of 63 square meters only (much below 10% of the prescribed ceiling limit) might not be declared surplus. The averments in that regard and the contents of the certificate at Annexure E to this petition have remained uncontroverted. In that view of the matter, the petitioner's case will have to be accepted that he has a constructed house in one parcel of land admeasuring 297.19 square meters situated within the urban agglomeration of Rajkot and the construction was in existence prior to coming into force of the Act.

5. Once that clear position is accepted, the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567 would govern the case. Such constructed property together with the land appurtenant thereto will have to be accepted. The area of 297.19 square meters will have therefore to be excluded from the holding of the petitioner. That would certainly bring down the petitioner's holding within the ceiling limit of 1500 square meters for the urban agglomeration of Rajkot under the Act.

6. In view of my aforesaid discussion, I am of the opinion that the impugned passed by respondent No.1 on 31st May 1982 at Annexure A to this petition as affirmed in revision by the order passed by and on behalf of respondent No.2 on 16th March 1988 at Annexure C to this petition deserves to be quashed and set aside. It may be clarified that the basis of the impugned order at Annexure A to this petition being the final statement under sec. 9 of the Act will have also to be quashed and set aside.

7. In the result, this petition is accepted. It is hereby declared that the petitioner's holding is not in excess of the ceiling limit for the purposes of the Act. Rule is accordingly made absolute with no order as to costs.

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